

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KYLE RUSSETTE,

Defendant.

CR 14-79-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Kyle Russette (Russette) has been accused of violating the conditions of his supervised release. Russette admitted all of the alleged violations, except alleged violation 12. Russette's supervised release should be revoked. Russette should be placed in custody for 6 months, with 30 months of supervised release to follow. Russette should receive credit for time served since April 10, 2019.

II. Status

Russette pleaded guilty to Assault with a Dangerous Weapon on November 17, 2014. (Doc. 29). The Court sentenced Russette to 52 months of custody, followed by 3 years of supervised release. (Doc. 39). Russette's current

term of supervised release began on November 21, 2018. (Doc. 45 at 1).

Petition

The United States Probation Office filed an Amended Petition on September 4, 2019, requesting that the Court revoke Russette's supervised release. (Doc. 45). The Amended Petition alleged that Russette had violated the conditions of his supervised release: 1) by failing to report to his probation officer as directed; 2) by using controlled substances; 3) by failing to answer truthfully questions asked by his probation officer; 4) by committing other crimes; and 5) by consuming alcohol.

Initial appearance

Russette appeared before the undersigned for his initial appearance on September 5, 2019. Russette was represented by counsel. Russette stated that he had read the petition and that he understood the allegations. Russette waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on September 11, 2019. Russette admitted that he had violated the conditions of his supervised release: 1) by failing to report to his probation officer as directed; 2) by using controlled substances;

3) by failing to answer truthfully questions asked by his probation officer; 4) by committing other crimes; and 5) by consuming alcohol. Russette did not admit alleged violation 12. The government did not attempt to prove alleged violation 12. The violations that Russette admitted are serious and warrant revocation of Russette's supervised release.

Russette's violations are Grade C violations. Russette's criminal history category is I. Russette's underlying offense is a Class C felony. Russette could be incarcerated for up to 24 months. He could be ordered to remain on supervised release for up to 36 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 3 to 9 months.

III. Analysis

Russette's supervised release should be revoked. Russette should be incarcerated for 6 months, with 30 months of supervised release to follow. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Russette that the above sentence would be recommended to Judge Morris. The Court also informed Russette of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Russette that Judge Morris would consider a timely

objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Russette stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court **FINDS:**

That Kyle Russette violated the conditions of his supervised release by failing to report to his probation officer as directed, by using controlled substances, by failing to answer truthfully questions asked by his probation officer, by committing other crimes, and by consuming alcohol.

The Court **RECOMMENDS:**

That the District Court revoke Russette's supervised release and commit him to the custody of the United States Bureau of Prisons for a term of 6 months, with 30 months of supervised release to follow. Russette should receive credit for time served since April 10, 2019.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may

accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 12th day of September, 2019.



John Johnston
United States Magistrate Judge